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SUMMARY RECORD OF THE FIRST PART (PUBLIC)* OF THE 340th MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 19 May 1998, at 10 a.m.

Chairman: Mr. BURNS

later: Mr. WALKATE

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* The summary record of the second part (private) of the meeting appears as document CAT/C/SR.340/Add.1.

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The meeting was called to order at 10.05 a.m.

JOINT MEETING WITH THE BOARD OF TRUSTEES OF THE UNITED NATIONS VOLUNTARY FUND FOR VICTIMS OF TORTURE, THE COMMISSION ON HUMAN RIGHTS SPECIAL RAPPORTEUR RESPONSIBLE FOR ISSUES RELATING TO THE PRACTICE OF TORTURE, AND THE HIGH COMMISSIONER FOR HUMAN RIGHTS

1. Mrs. Robinson (High Commissioner for Human Rights), Mr. Rodley (Special Rapporteur responsible for issues relating to the practice of torture) and Mr. Walkate, Mr. Tosevski, Mr. Hatano and Mr. Wako (Board of Trustees of the United Nations Voluntary Fund for Victims of Torture) took places at the Committee table.

2. The CHAIRMAN extended a welcome to the High Commissioner for Human Rights, the Special Rapporteur on Torture, and the members of the Board of Trustees of the United Nations Voluntary Fund for Victims of Torture, and expressed gratification at the opportunity thus afforded to all of them to unite their efforts in the fight against torture. He invited Mr. Walkate to preside over the deliberations.

3. Mr. Walkate (United Nations Voluntary Fund for Victims of Torture) took the Chair.

4. The CHAIRMAN informed the Committee that Ms. Odio Benito, also a member of the Board of Trustees of the Fund, was detained at The Hague by her duties as a member of the International Criminal Tribunal for the former Yugoslavia.

5. Speaking as Chairman of the Board of Trustees of the Fund, he said that in the common fight against the evil of torture the Committee against Torture was in the front line where prevention was concerned, inasmuch as it was the body which approached member States to urge them to fulfil their obligations. In regard to prevention the High Commissioner also played a decisive role by virtue of her continuing contacts with States parties and with the Special Rapporteur on torture. The Fund, for its part waged the battle on another front, for it dealt with people after they had been victims of torture. It was a distressing but necessary task to determine the facts about what had happened to them and evaluate their needs. Established 17 years previously by the General Assembly as an affirmation of the existence of a collective responsibility towards the survivors of torture, the Fund received contributions from States, organizations and individuals and distributed them in the form of humanitarian, legal and financial aid to the victims and their families, by according subsidies to organizations that submitted to it plans for assistance in the medical, psychological and psychiatric, social, economic and legal spheres.

6. Since its creation, the Fund had seen a progressive increase in applications for subsidies. Initially, they had been submitted mainly by small organizations, but currently more and more of them were coming from larger organizations. The people with the task of looking after victims of torture were increasingly competent in their area and came into contact with a growing number of survivors. The question was not, of course, to determine how many victims of torture there were in the world; if there were only one it would be too many. To determine how many people the Fund had helped was by no

means easy; a survey had shown that in 1997 it had had dealings with some 100 organizations, large and small, working on the rehabilitation of victims and had come to the assistance of some 60,000 persons in about 135 countries. As to contributions, they had progressively increased thanks to the efforts of successive High Commissioners, the secretariat and the members of the Committee, who had campaigned to induce member States to contribute. In 1998 the Fund had 4 million dollars in hand, which was 1 million dollars more than the previous year, and the total value of requests was of the order of 6.8 million dollars. In 1997 the Board of Trustees, which looked very closely into needs, had found that some requests addressed to it were manifestly excessive and had asked those concerned to submit more realistic figures.

7. Prevention was crucial and the Committee against Torture was playing an indispensable role when it publicly proclaimed for the attention of Governments that torture was unacceptable and that its perpetrators must be brought to justice. The question of impunity was pivotal; the fact that torturers remained unpunished was not only morally and judicially reprehensible but also, above all, inflicted further wrong upon the victims, so it was essential to convince States that they must prosecute the guilty parties. Training of all law-enforcement personnel and members of the medical professions was also crucial. All too often it came to light that medical staff had participated actively in the infliction of torture, so training specifically addressed to them on the subject of prohibition of torture seemed imperative.

8. Another point of great concern to the Voluntary Fund was the emergence of new torture techniques. Year by year it was observed that torturers were resorting to ever more refined methods, designed to leave no trace and make the after-effects more and more difficult to treat, which showed that torture was not inflicted only for immediate ends, but also with the aim of doing lasting harm to the victims. Thus, one organization had reported that the new scientific methods of torture, applied beyond any doubt with the participation of doctors and surpassing in horror anything that the Middle Ages had seen, included, for example, the feeding to the victim of yoghurt into which had been incorporated radioactive substances that dissolved the body proteins, causing intense suffering and damaging the brain tissue. It was more urgent than ever to take action and he hoped that the participants in the present meeting would adopt a joint declaration that could be published on the occasion of the United Nations International Day in support of the victims of torture.

9. Mrs. ROBINSON (High Commissioner for Human Rights) said she was all the more gratified at the opportunity afforded her to take part in the joint meeting in that it was her wish to establish closer ties between the three United Nations mechanisms thus meeting together, with a view to combating as effectively as possible one of the most serious of all violations of human rights. The adoption of a joint declaration highlighting that cooperation would show their commitment to working harder together to overcome a terrible and worldwide evil.

10. She shared the viewpoint expressed by her predecessor, who had stated, in Copenhagen, that putting an end to torture was the first requirement for the realization of the most fundamental right, namely recognition of the

dignity and inherent worth of every individual. On the occasion of the fiftieth anniversary of the adoption of the Universal Declaration of Human Rights, Governments must be pressingly urged to condemn torture unequivocally and prosecute torturers, and in particular to ratify the Convention and accept the optional provisions set out in its articles 20 and 22. It was also desirable that the future optional protocol on torture should be adopted as quickly as possible, for it would greatly assist the prevention of torture at places of detention. The progress made at its last session by the working group appointed to draw up the protocol was very encouraging.

11. The number of meetings of the Committee had been increased in 1998 to take account of its heavier workload, due in particular to the functions it had to perform under articles 20 and 22 of the Convention. She and the Secretary-General were in favour of lengthening the Committee's spring sessions, and she was pleased to see that the members of the Committee were ready to devote more time to their task. She paid tribute to the high level of competence they possessed, as also to that exhibited by the Special Rapporteur and those responsible for the management of the Voluntary Fund.

12. United Nations Day in support of the victims of torture would be observed on 26 June 1998 and the Deputy High Commissioner would be taking part on that day in a ceremony organized at Copenhagen by the International Rehabilitation Council for Torture Victims. She herself would be in Vienna on that day with the Secretary-General but would also be expressing her support for that effort through the joint declaration that was to be adopted at the current meeting.

13. Mr. BURNS, Chairman of the Committee against Torture, read out in English the provisional text of the draft joint declaration which the participants in the current meeting were invited to adopt. The authors of the declaration, welcoming the decision of the General Assembly to observe on 26 June 1998 the United Nations International Day in support of torture victims, and recognizing that torture was one of the vilest acts one human being could commit against another, that it was prohibited by article 5 of the Universal Declaration of Human Rights, and that it was a violation of a non-derogable human right and an international crime, urged all States, if they had not yet done so, to ratify the United Nations Convention against Torture a d Other Cruel, Inhuman or Degrading Treatment or Punishment without reservation, calling upon them also to: ensure that torture was designated as a crime in their domestic law; rigorously pursue torturers wherever they had committed their crimes and bring them to justice; provide in their domestic law for compensat ion and rehabilitation of victims of torture; contribute to the United Nations Voluntary Fund for Victims of Torture as generously and frequently as they could; and cooperate whenever so asked with the United Nations Special Rapporteur responsible for issues relating to torture. Through such measures, it could be ensured that the vile crime of torture was repressed and condemned by all the peoples of the world.

14. The draft joint declaration was adopted by consensus.

15. Mrs. Robinson (High Commissioner for Human Rights), withdrew.

16. The CHAIRMAN gave the floor to Mr. Burns to report on the work of the Committee against Torture.

17. Mr. BURNS, outlining the activities and functions of the Committee against Torture, reminded members that the Convention invested it with powers in three areas. Under article 19 of that instrument, the Committee was empowered to monitor, on the basis of the reports submitted by the States parties, the application of the Convention in the various countries and the effect given to the undertakings entered into by the States. As appropriate, it pointed out shortcomings, awarded "good marks" and made recommendations, endeavouring to obtain the cooperation of States parties and bring moral pressure to bear upon them. In virtue of article 20, the Committee was competent to institute an inquiry when it received well-founded indications that torture was being systematically practiced in the territory of a State party, including a visit to that territory insofar as the State party concerned had not filed any reservations with regard to the relevant provisions. Only four inquiries accompanied by visits had been conducted since the Committee's creation. Under article 22, the Committee was competent to receive and consider communications from individuals subject to the jurisdiction of any State party that had made the declaration provided for in the article. In fact, dealing with such communications was becoming an ever more important part of the Committee's work.

18. Furthermore, the Committee against Torture had begun to draft, for the information of States parties and of any authors of communications, some general observations on its position with regard to one or another article of the Convention. It was collaborating with the Voluntary Fund for Victims of Torture by systematically encouraging the States parties submitting reports to make contributions to the Fund. Finally, it had concluded arrangements with the Special Rapporteur on Torture whereby the latter refrained from intervening in a situation upon which the Committee had decided to institute an inquiry under article 20 of the Convention.

19. As for those major subjects of concern to the Committee, the questions of impunity and of training in human rights, there were obviously not very many States ready to make vigorous efforts, when the need arose, to inquire into acts of torture committed in their territory by members of the police force and prosecute the perpetrators. In such cases, the Committee's task was simple - to remind States parties of their obligations in that regard - whereas States in whose territory systematic acts of torture had been committed and which, as was currently often the case, were striving to consolidate a return to peace and democracy after years of turmoil, were faced with a dilemma: to achieve at any price a political reconciliation between the respective groups represented by the perpetrators and the victims of the acts of torture committed, or to discharge the obligations entered into under the Convention. It was incumbent upon the Committee to pursue its mission while also being aware of such situations. Where training was concerned, it was important to convince States of the usefulness of providing funds for training of police personnel to make them aware of the principles enshrined in the Convention, for that would be the most effective way of overcoming the problems encountered in the application of that instrument.

20. Mr. RODLEY (Special Rapporteur on torture) said he was glad to have the opportunity to take part in a joint meeting of three mechanisms dealing with questions of torture; the meeting would undoubtedly be a source of inspiration for each of those mechanisms in its work. With the approaching celebration of the International Day in support of the victims of torture, it was gratifying that the meeting should have adopted a joint declaration on the subject.

21. Referring to his own tasks, he said that his activities, though deriving from a clear mandate, were far less structured than the tasks of the Committee Against Torture and differed from them in many respects, the most obvious example being the urgent appeals procedure. That procedure, which was preventive and not comminatory in nature, consisted, when the Special Rapporteur or the Office of the High Commissioner for Human Rights was informed that a detainee was at risk of being tortured, in urgently requesting the Minister for Foreign Affairs of the State concerned to make sure that the individual in question was detained in conditions that safeguarded his dignity and ensured respect for his rights. Another example: the Special Rapporteur submitted to Governments summaries of allegations of torture made against them; those summaries were always based on reliable information and dealt either with the general nature of the practices imputed to those Governments or with the institutional or legal shortcomings conducive to the commission of acts of torture in the country, or else again with individual and quite specific acts of torture or ill-treatment. That function differed from the activities conducted by the Committee Against Torture under article 22 in that the Special Rapporteur was not required, any more than were other mechanisms such as the Working Group on Enforced or Involuntary Disappearances or the Special Rapporteur on extrajudicial, summary or arbitrary executions, to reach a decision on communications submitted by individuals claiming to have been victims of torture. There was nonetheless a certain complementarity between the tasks of the Committee and those of the Special Rapporteur inasmuch as the latter, in his annual report to the Commission on Human Rights, submitted observations on the problems identified in which he often took into account the conclusions formulated by the Committee on the completion of its study of the reports submitted by States parties under article 19. The Special Rapporteur and the Committee also endeavoured to avoid duplication, whether in the conduct of inquiries instituted by the latter in pursuance of article 20 of the Convention or in cases of expulsion or refoulement that the Committee had to consider under article 3 of that instrument. For his own part, too, the Special Rapporteur endeavoured in his field activities to elicit contributions to the Fund for the Victims of Torture. The problem of impunity seemed to be in the forefront of everyone's concerns. For his own part, in his last report to the Commission on Human Rights, he had emphasized the need to establish an international criminal court with statutes that would empower it to take cognizance of systematic practices constituting crimes against humanity or acts of violence committed in the course of armed conflicts and contravening the laws of war and, in particular, the Geneva Conventions.

22. The CHAIRMAN observed that the mechanisms for dealing with questions concerning torture possessed in practice little leverage for compelling States to discharge their international obligations. One might wonder what was the likely reaction of a Government - shame or embarrassment? - when it became clearly apparent that torture was practised in the country although the State

had pledged itself not to allow such acts. What did it do to put that right? Was the mobilization of public opinion capable of spurring it into action? He invited the participants in the meeting to think about those questions.

23. Mr. WAKO (Board of Trustees of the Voluntary Fund for Victims of Torture), reverting to the text of the joint declaration that had just been adopted, expressed regret that the Committee had not reemphasized the idea that torture must disappear if there was to be any real respect for human rights. He also had doubts about the wording of the appeal to States to contribute to the Fund for Victims of Torture.

24. With more particular reference to the Voluntary Fund, he was grateful to the Special Rapporteur and the Chairman of the Committee for everything they were doing to elicit contributions and thought it would be well to strengthen further the ties of cooperation between the three mechanisms for that purpose. The Special Rapporteur would perhaps like, in the course of his activities in the field, to give further help to the Board of Trustees of the Fund in identifying victims of torture and their families, particularly in Africa. While the Board of Trustees was doing everything it could to help victims of torture, it remained dependent on the existence of organizations able to bring those victims and their families to its attention. Such organizations were woefully lacking in Africa, so the Board of Trustees would be glad of any information the Committee and Special Rapporteur could give it to enable it to open up lines of communication with the countries of that continent.

25. With regard to impunity, he noted that the problem was multifactoral: sometimes it was not the Government's political will which was in question, but rather the practical difficulties it encountered in inquiring into allegations of torture and prosecuting the perpetrators. Those difficulties might lie simply in the ineffectiveness of the system of administration of justice. Moreover, many developing countries were not in a position to finance training of the persons responsible for the application of the laws because they had to cope with far more urgent needs in other areas. For those reasons, States were often powerless to overcome the problem of impunity even when they had the backing of a democratic regime.

26. Mr. SØRENSEN noted with gratification that the participants in the joint meeting had laid great stress on the prevention of acts of torture and the training of those responsible for applying the law. He himself wished to emphasize the very great importance of training for doctors; all the studies showed that in 60 per cent of cases of torture a doctor was involved at one stage or another. Nor must one leave out of account the part played by the studies which doctors themselves conducted on methods of torture. After a while, they were able to catalogue the signs that a given method of torture had been used and make them known, thus helping to bring about the abandonment of that method - "falaka" (beating on the soles of the feet) was an example of that in the case of Turkey. Of course, new methods of torture came to take the place of the old ones, so the progress made in the fight against torture by that means was not always notable. At the most, such studies provided means for retrospective control. Due emphasis must also be laid on measures for prevention.

27. The effort at prevention, with which he bracketed training, operated at three levels. Primary prevention, in which the United Nations committees and commissions operating in the human rights field played a role, aimed at creating the political will to prohibit torture and at sensitizing the whole world to its horrific nature. Secondary prevention sought mainly to limit the number of cases of torture, and that was the stage at which training of police, prison staff and physicians was of prime importance. It brought into play non-governmental organizations as well as Governments, on which article 10 of the Convention laid an obligation to work to that end, but also the technical assistance branches of the United Nations, which had prepared a number of very useful brochures. As for tertiary prevention, it aimed at mitigating as far as possible the effects of torture. It was at that level that the Voluntary Fund played its part. It was also important to train and sensitize the United Nations peacekeeping forces which might, in the field, come up against acts of torture and must be able to respond to them.

28. Mr. ZUPANČIČ stressed that some legal systems would appear to facilitate the practice of torture, inasmuch as it might be perceived as the by-product of an inquisitorial judicial system carried to the extreme. It was important to take action at the level of legal systems so as to make torture difficult or even impossible. Article 15 of the Convention, which required States parties to ensure that no statement obtained by torture could be invoked as evidence in any proceedings, was of key importance in that regard. While the distinction between authoritarian and non-authoritarian regimes did reflect a certain reality, with most countries it was a flaw in the judicial system which made torture, and the impunity that often went with it, possible. He therefore stressed the importance of the composition of delegations, which must be equipped to understand the very specific legal questions that were involved, in particular in the context of article 15 of the Convention.

29. Mr. YAKOVLEV said that one of the Committee's achievements had been to establish torture as a crime condemned by the international community. The importance of Member States' incorporating the definition of torture into their domestic legislation was now taken for granted, at least in principle. It was because torture sometimes lay at the very heart of the functioning of the State and impinged upon the domains not only of ethics, but also of policy and of the legal order of the whole of society, that the international community could and must be concerned about it.

30. He drew a distinction between sporadic torture or ill-treatment, which might be described as "excesses" committed by individuals, torture attributable to flaws in a given legal system, and the torture which was an integral part of the system of government of certain States. He also drew a parallel between the responsibility of torturers and that of the State and drew attention to the dangers of impunity, which benefited the torturers or the State. In face of that phenomenon, the Committee against Torture must react firmly.

31. Mr. CAMARA also dwelt on the phenomenon of impunity, which must be analysed in depth if the problems involved were to be solved. It existed in two forms. The first resulted from amnesties which, while generally constituting an element in a process of democratization, led to impunity for the torturers. Perpetrators could also have the benefit of a de facto amnesty

granted by reconciliation commissions, whereby no proceedings were taken against a torturer on condition that he publicly admitted his crime. The other form of impunity resulted from there being no prosecution, either because the crime of torture was not recognized in the national legislation, or because of lack of political will to punish torturers. The problems must therefore be clearly categorized in order to find appropriate means of combating the various manifestations of impunity.

32. Regarding the joint declaration just adopted, he wondered whether a specific reference to impunity ought not to be added, for example by mentioning the idea of an international criminal court and proposing that the authorities of States parties which failed to meet their obligation to take proceedings against torturers might be brought to court.

33. Finally, he considered that, while the Committee was of course a forum for dialogue, in case of dialogue of the deaf it must become a decision-making organ and if a State party pleading special circumstances, flouted the Convention, remind it of its international obligations.

34. The CHAIRMAN put forward the idea of regularly holding an informal meeting before the opening of each session of the Committee, including whenever possible the Special Rapporteur on torture and a representative of the Voluntary Fund, to exchange information, for example on the number of victims of acts of torture, by nationality. He noted too that the World Health Organization had observer status with the Committee and that, in the context of that agency's efforts to achieve health for all, actions specifically aimed at combating torture might be contemplated. The importance of the after-effects of torture must not be underestimated. Some members of the Committee had brought up the question of amnesties which, while they might sometimes constitute a political solution to delicate problems, did nothing to help in healing the wounds of the victims. Concerning the United Nations International Day in support of the victims of torture, he welcomed the initiative of Mr. Burns in proposing a joint declaration to be read out on 26 June. On that day, there would be an exhibition of creative work by persons who had survived torture; the idea was to sensitize public opinion to torture, with everything that that word could mean.

35. Mr. RODLEY (Commission on Human Rights Special Rapporteur responsible for issues relating to torture), reverting first to the idea put forward by Mr. Wako, who had wondered about how to identify the victims of torture with a view to giving them the benefit of assistance from the United Nations Voluntary Fund for Victims of Torture, said that to the best of his recollection the Fund made payments only through established channels and never directly to the victims. Perhaps encouragement could be given to NGOs, whose activities centred mainly upon reporting of cases of torture, to direct them more towards assisting the victims.

36. With regard to training of police personnel, the Voluntary Fund for Advisory Services and Technical Assistance in the Field of Human Rights was getting well into its stride, had drafted manuals, and was fully prepared to organize training programmes of the kind Mr. Wako had in mind.

37. Regarding the various aspects of prevention, Mr. Zupan□i□ had already referred to the inadmissibility of a statement that was established to have been obtained by torture (art. 15 of the Convention). Another aspect, which was not dealt with in the Convention because it had still been under discussion in connection with the drafting of another instrument, was incommunicado detention. By authorizing that form of detention, the authorities of a country were practically encouraging the officials entrusted with obtaining confessions to ill-treat or torture detainees. All necessary efforts must therefore be exerted to induce States to shorten to the utmost the maximum legally authorized period of incommunicado detention.

38. Finally, with regard to the problem of impunity, in the first place he too drew a distinction, in the reports that he was required to prepare for the Commission on Human Rights, between de jure impunity and de facto impunity and he felt somewhat suspicious of countries that pleaded a little too often the exigencies of transition to democracy. Under international law, each State was required to bring to court those responsible for acts of torture and a State could not unilaterally exempt itself from its obligations, which were in that specific instance to hold an inquiry into the facts, to have those responsible brought before the courts, and to see to it that the victims were compensated.

39. The CHAIRMAN said that the experiment just conducted had been worth while and would certainly be repeated in the future.

40. Mr. BURNS (Chairman of the Committee against Torture) reaffirmed for his own part the keen interest he took in the annual reports prepared by the Special Rapporteur and the invaluable help that they afforded the Committee in its work.

41. Mr. Rodley, Mr. Walkate, Mr. Tosevski, Mr. Hatano and Mr. Wako withdrew.

The first part (public) of the meeting rose at 12 noon.